

United States
Environmental Protection
Agency

Region 10
1200 Spain Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

0029725



Incoming 9302988

March 16, 1992

REPLY TO
ATTN OF: HW-106

Narda Pierce
Assistant Director
for Waste Management
State of Washington
Department of Ecology
PV-11
Olympia, Washington 98504

Re: EPA/Ecology ID No. WA7 89000 8967

Dear Ms. Pierce:

With this letter the U.S. Environmental Protection Agency (EPA) is conveying the concerns and comments which have resulted from our review and further consideration of the draft Resource Conservation and Recovery Act (RCRA) permit for Hanford. The enclosure accompanying this letter details EPA's comments. In addition, we have scheduled a meeting for our respective staff members to review the enclosed comments on Tuesday, March 17. EPA's comments are being provided in accordance with 40 C.F.R. § 271.19, which sets a formal mechanism for EPA comment on state permits issued pursuant to the authorized RCRA program.

Although the state's phased permitting approach did not require the completion of a Part B application for the Hazardous Waste Vitrification Plant (HWVP) prior to permit issuance, EPA initially agreed to support the state's novel approach for phased permitting. Subsequent legal considerations caused EPA to reconsider this approach. At the time of draft permit public notice, EPA chose not to issue the 40 C.F.R. Part 264 Subpart X permit for which EPA currently retains regulatory authority. As a result, the draft permit for HWVP is a "state-only" permit and was not issued pursuant to RCRA.



The regulatory status of HWVP has been a mutual concern of our agencies. Allowing HWVP construction to legally start in April 1992 has long been a recognized milestone on the critical path to the December 1999 operational start date established by the Hanford Federal Facility Agreement and Compliance Order (FFACO). EPA believes that HWVP can qualify as a new unit under interim status, in accordance with state authority under WAC 173-303-805(7)(a)(iii) and (b)(v). Ecology is authorized to grant interim status in these circumstances. Thus, Ecology has the discretion to allow facilities to add process units under interim status if such change is necessary to comply with a federal corrective action order or other state or federal authority (such as the terms of the FFACO). Such changes are not restricted to regulatory "reconstruction" limit found at WAC 173-303-805(7)(b), when limited to units necessary to address onsite releases.

Under interim status, DOE could begin site preparation activities during April 1992. EPA and Ecology could then focus on the technical review of DOE's HWVP Part B application. It is unlikely that DOE's near term construction activities, which involve site preparation and construction of housing for the units, will progress beyond the ability to retrofit should unanticipated changes be identified in subsequent designs.

The existing regulations should provide EPA and Ecology adequate control over HWVP development and permitting. As a further oversight tool, Ecology may consider the option of a compliance order with DOE to clearly define the schedules and expectations for progress on the HWVP Part B application.

On a final note, I believe the agencies should reconsider the permit schedule which currently allows only two weeks for consideration of comments, preparation of written response, and resultant modification to the permit prior to issuance. With the foregoing changes to the regulatory status of HWVP, the agencies could allow additional time for consideration of comments and to make any necessary permit revisions.

We are looking forward to working closely with you and your staff to finalize the Hanford Facility Dangerous Waste Permit.

If Ecology staff or attorneys would like clarification or further discussion of the enclosed comments, please direct them to Carrie Sikorski, of the RCRA Permit Section at (206) 553-2851, or Dean Ingemansen of EPA's Office of Regional Counsel at (206) 553-1744.

Sincerely,

for M. F. Smith
for Randall F. Smith, Director
Hazardous Waste Division

cc: R. Izaat, DOE-RL
C. Clark, DOE-RL
S. Wisness, DOE-RL
S. Price, Westinghouse Corporation
M. Tilden, Battelle Pacific Northwest Laboratories
D. Jansen, Ecology
J. Manning, Washington State Attorney General's Office

940313.0236

Comments Regarding
January 15, 1992, Draft Permit
for
The Hanford Facility

1. The draft permit currently includes both Westinghouse Corporation (WHC) and Pacific Northwest Laboratories (PNL) as co-permittees. The fact sheet states that WHC and PNL are to be responsible only for the areas that they operate on a day-to-day basis. The Hanford Federal Facility Agreement and Consent Order (FFACO) does not provide for inclusion of contractors as permittees (see Article II), and therefore contractors would not be subject to its provisions for document review, dispute resolution, etc., while Department of Energy (DOE) would be. The different treatment of DOE and the contractor/operators needs to be reconciled. The fact sheet does not provide the legal rationale for including multiple operators as co-permittees.
2. The Permit Condition Authority table found on page 6 of the draft permit is not currently complete or entirely accurate. In addition, several citations regarding Agency enforcement of the permit found in the introductory language of the permit need to be revised. EPA will prepare these revisions prior to issuance of the final permit.

Part I - Standard Conditions

3. Although the Fact Sheet indicates that all units not included at this time in this permit will continue to operate under interim status, permit condition I.A.1.a specifies that any treatment, storage, or disposal of dangerous waste by the Permittees that is not authorized by WAC 173-303 or this permit is prohibited.

Either permit condition I.A.1.a or the introduction needs to clarify that the requirements of this permit are not applicable to units and operations that are subject to interim status requirements under WAC 173-303, and that the issuance of this permit does not affect the status of these units. For inspection and enforcement purposes, a list of units operating under interim status should be prepared and maintained up-to-date in both Ecology, EPA and DOE records.

4. Permit condition I.C.3.a requires that all Class I permit modifications which do not require prior approval shall be performed as Class 3 permit modifications. This permit condition should be revised to require compliance with the permit modification procedures found at WAC 173-303-830(4) and/or 40 C.F.R. § 270.42.

5. The last half of permit condition I.D.2, beginning "... unless the Director and the Administrator determine ...", should be deleted. 40 C.F.R. § 124.16 requires that all non-severable conditions also be stayed in the event of an appeal of certain permit conditions. "Technologically incompatible" conditions would fall within the realm of non-severable conditions.
6. Permit condition I.E.3 should be revised to require that the permittee submit a new permit application at least 180 calendar days prior to the expiration date of this permit.
7. Permit condition I.E.8 requires that the permittees furnish information "within a reasonable time". This appears to be in conflict with the definition of "reasonable time" found on page 11 of the draft permit, which is intended to define this term as it applies to site access for inspection purposes.

Part II - General Facility Conditions

8. The majority of the permit conditions contained in Section II of the permit are designated as State-only conditions of the draft permit. These conditions require submittal of and compliance with certain site-wide plans. It is understood by EPA that these conditions are based on state authorities which exist independently from the delegated RCRA permitting program. EPA believes such conditions are broader in scope than the delegated RCRA program, as they have been applied to activities of the facility which do not have interim status and are not subject to final permitting standards.

Some conditions also require submittal of information which is typically provided in permit applications. RCRA provides authority for inclusion of compliance schedules for physical modification of the facility to meet more stringent permitting standards, and for corrective action. This authority does not normally extend to submittal of information required in the permit application.

EPA has also noted that the federal portion of the permit (i.e., Part IV) is currently lacking the standard conditions which are required in all permits pursuant to 40 C.F.R. § 270.30. This occurred as a result of Ecology's adaptation of the standard conditions to site-wide conditions and the status of these conditions as "state-only". To add standard conditions that support the federal corrective action permit conditions the permit would either have to add a full set of standard conditions that are independent from the site-wide conditions or issue a separate permit for federal permit conditions.

9. The permit must be revised to clarify that the site-wide permit conditions shall not apply to units and operations that are subject to permitting or interim status requirements except for the 616 Non-Radioactive Dangerous Waste Storage Facility (616) and the 183-H Solar Evaporation Basins (183-H). Final administrative disposition of permit applications for units other than 616 and 183-H is not being taken at this time.
10. Procedures for determination of "best efforts" under permit condition II.T should be clarified. As this permit condition incorporates Paragraph 106 of the FFACO, it is unclear whether the procedures of that paragraph or the procedures of Definition "c" (p. 9 of the permit) are to be used to obtain off-site access agreements. Note that permit condition IV.B.2 also specifies that Paragraph 106 of the FFACO shall be used to obtain off-site access agreements.

Part III - Unit Specific Conditions

11. EPA has determined that, at a minimum, all permit conditions included in Chapters 1 and 2 of Part III of the draft permit, "616 Non-Radioactive Dangerous Waste Storage Facility" and "183-H Solar Evaporation Basin", are necessary to implement approved State program requirements. As provided in 40 C.F.R. § 271.19, EPA may take action under Section 3008(a)(3) of RCRA against the Permittees, as provided in the FFACO, in the case of a violation of a State program requirement or the conditions of this permit.

Part IV - Corrective Action for Past Practices

12. Article IV of the FFACO, paragraphs 15-20, sets out the authorities to be used to conduct corrective actions at the Hanford facility. Waste management units at Hanford have been classified as either TSD units subject to Chapter 70.105 RCW or past practice units subject to either CERCLA or the corrective action provisions of RCRA.

In addition, the Action Plan portion of the FFACO states that until Ecology is authorized to administer the RCRA corrective action program, corrective action will be administered and imposed by EPA. The imposition of separate "state-only" corrective action requirements is inconsistent with the FFACO.

9913139.0239

In reconsidering the draft permit conditions during the public comment period, EPA has determined that the need for revision of the corrective action portion may be extensive. Given the significance of the anticipated changes, the corrective action section of the permit may have to be repropose and resubjected to a 45-day comment period.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

CORRESPONDENCE DISTRIBUTION COVERSHEET

Author

R. F. Smith

Addressee

N. Pierce

Correspondence No.

Incoming 9302988

Subject: EPA\ECOLOGY ID NO. WA7 89000 8967

INTERNAL DISTRIBUTION

Approval	Date	Name	Location	w/att
		Correspondence Control	A3-01	X
		R. C. Brunke	H6-23	
		G. W. Jackson, Assignee	H6-21	
		H. E. McGuire, Level 1	B3-63	
		S. R. Moreno	B3-06	
		S. M. Price	H6-23	
		E. P. Vodney	B3-50	
		EPIC	H6-08	
		RCRA File/GHL	H6-23	